

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re BAYCOL PRODUCTS LITIGATION

MDL NO. 1431
(MJD/SRN)

This Document Relates to:

ORDER

Verlean Toles, et al., v. Bayer Corp., et al.
(Plaintiff Ocie Dunham only)

Case No. 03-1174

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Susan Richard Nelson dated February 27, 2007. Plaintiff objects to that portion of the Report and Recommendation that recommends Plaintiff's counsel be ordered to pay \$495.20 in court reporting fees for the deposition in which Ms. Dunham failed to appear. Plaintiff's counsel argues it did everything possible to notify Ms. Dunham of the deposition, sending numerous letters, making numerous phone calls, and sending the deposition notice by federal express, which delivery was confirmed.

Magistrate Nelson recommended that counsel pay the court reporter fees of \$495.20 as counsel did not make any attempt to reschedule the deposition at a time for which they could guarantee Ms Dunham's appearance. Based on the Report and Recommendation of the Magistrate Judge, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

1. Defendant Bayer Corporation's Motion for Discovery Sanctions against Plaintiff Ocie Dunham [Doc. No. 156] is GRANTED;
2. Plaintiff Ocie Dunham's action is DISMISSED WITH PREJUDICE; and

3. Plaintiff's counsel is required to pay the sum of \$495.20 to Bayer Corporation within 10 days of this Order.

DATED: April 26, 2007.

s / Michael J. Davis
Judge Michael J. Davis
United States District Court